

**•• REMARKS/ ARGUMENTS ••**

The Office Action of March 24, 2005 has been thoroughly studied. Accordingly, the changes presented herein for the application, considered together with the following remarks are believed to be sufficient to place the application into condition for allowance.

Together with the present Amendment, applicant is submitting a Substitute Specification together with a marked-up copy of the original Specification (with the Preliminary Amendment of May 24, 2001 entered).

Applicant affirms that the Substitute Specification submitted herewith only includes those changes shown in the marked-up copy of the original Specification. Also, care has been taken to avoid adding any new matter to the specification.

Entry of the Substitute Specification is earnestly requested.

On page 2 of the Office Action the Examiner objected to the drawings for not showing the first and second zones,  $L_1$ ,  $L_2$ ,  $D_1$  and  $D_2$  that are recited in claim 1.

In response to this objection to the drawings, applicant is submitting herewith two sheets of replacement drawings which replace Fig. 4 with new Figs. 4A and 4B. In addition to the submission of replacement drawings, the specification has been changed to describe Fig. 4A as being a fragmentary perspective view of the backsheet taken from range A in Fig. 2 and Fig. 4B as being a fragmentary perspective view of the backsheet taken from range B in Fig. 2.

On page 4 of the Office Action the Examiner objected to the specification and the disclosure as failing to provide antecedent basis for L<sub>1</sub>, L<sub>2</sub>, D<sub>1</sub> and D<sub>2</sub> and for being inconsistent because of the description of L and D.

In response the objections to the specification and the disclosure applicant has amended the specification to describe L<sub>1</sub>, L<sub>2</sub>, D<sub>1</sub> and D<sub>2</sub> in a manner that is consistent with the previous amendments to the claims.

In addition, applicant has amended the specification on page 13 in the manner courteously suggested by the Examiner.

On page 4 of the Office Action the Examiner has rejected claims 1-6, 8 and 9 under 35 U.S.C. §112, second paragraph. Under this rejection the Examiner has inquired if the phrase "said remaining zone" should be "said second zone." The Examiner is correct and the phrase "said remaining zone" has been changed to "said second zone."

Claims 1-3 stand rejected under 35 U.S.C. §102(b) as being anticipated by European Patent Application No. 0 650 714 A1 to Divo et al. or, in the alternative, under 35 U.S.C. §103(a) as being obvious over Divo et al. in view of U.S. Patent No. 5,846,232 to Serbiak et al. and U.S. Patent No. 4,655,760 to Morman et al.

Claims 4, 8 and 9 stand rejected under 35 U.S.C. §103(a) as being obvious over Divo et al. alone or Divo et al., Serbiak et al. and Morman et al. in view of U.S. Patent No. 5,853,881 to Estey et al.

Claims 5 and 6 stand rejected under 35 U.S.C. §103(a) as being obvious over Divo et al.

alone or Divo et al., Serbiak et al. and Morman et al.

For the reasons set forth below it is submitted that all of the pending claims are allowable over the prior art of record and therefore, each of the outstanding rejections should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

The Examiner had relied upon Divo et al. by referring to:

Figures 1-4, 6, 9-13, lines 31-39, portion(s) selectively "activated" while other remaining or second portion(s) remain unactivated, col. 1, lines 3-16, col. 3, lines 52-55, (it is noted "elongation as defined by the dictionary means "stretched out, lengthened), col. 8, line 6-col 9, line 6 (Note definition of "nonwoven" in Materials Handbook provided in a previous Office Action), col. 9, line 19-col 10, line 19, col. 11, lines 20-46, col.12, line 20-col. 13, line 5, col. 14, lines 28-30, col. 15, line 42 - col. 16, line 4, i.e. the cover is 26, the previous sheet is 24, the core is 28, the elastic members are 32, the first layer is 5 or 11, the second layer is 3 or 7 and 15.

The Examiner stated that:

Figures 2-3, col. 3, lines 52-55, col. 11, lines 20-46, and col. 6, lines 31-39 disclose the ratio set forth on lines 11-19 of claim 1.

The Examiner moreover stated that:

It is the Examiner's first position that col. 6, lines 31-39 also teach the structure of the lines 21-23 of claim 1 and claim 2.

And

Lines 19-21 and 23 et seq of claim 1, as best understood, note new matter rejection supra, recite function or capability of the claimed structure.

The Examiner concluded:

The Divo device includes the same structure, see cited portions above. Therefore there is sufficient factual basis to conclude that the function or capability of the claimed structure is also inherent in the same structure of Divo.

Applicant's independent claim 1 recites, in part:

.. said covering member consisting of an elastically stretchable first layer and an inelastically stretchable second layer formed of a plurality of continuous fibers, said continuous fibers being fixed to said elastically stretchable first layer in bonding zones spaced apart from each other so that a ratio of  $L_1/D_1$ , where  $L_1$  is a length of said continuous fibers extending between a first pair of said bonding zones in a first zone on said covering member and  $D_1$  is a distance in a straight line between said first pair of bonding zones in said first zone of said covering member is larger than a ratio of  $L_2/D_2$ , where  $L_2$  is a length of said continuous fibers extending between a second pair of said bonding zones in a second zone on said covering member and  $D_2$  is a distance in a straight line between said second pair of bonding zones in said second zone of said covering member, whereby said covering member is more easily stretched in a direction away from the skin contactable surface in said first zone than in said second zone of said covering member, and said first zone being adjacent said liquid-absorbent core member and at least substantially coextensive with said liquid-absorbent core member, so that pressure exerted on said covering member by said liquid-absorbent core member will stretch the first zone in said direction of the skin contactable surface without exerting any pressure on said discrete elastic members.

Divo et al. does not teach the structure required by applicant's independent claim 1.

The configuration of the first and second zones and their particular  $L/D$  ratios and stretchabilities in relationship to the discrete elastic members that are provided adjacent the leg-opening provides a unique, structurally-related function in applicant's invention.

As discussed in applicant's specification:

Only the range A of the backsheet 3 is deformed as indicated by chain lines in Fig. 2. The core member 4 shifts its position so as to protrude outwardly of the diaper 1

when the diaper 1 is put on a wearer's body with the topsheet 2 placed against the wearer's skin under pressure P exerted on the core member 4 (See Figs. 2 and 3). The pressure P is adequately dampened by the stretching of the range A to avoid exerting pressure on the elastic members 17 of the leg-openings via the ranges B. Thus, there is no apprehension that the desired fitness of the elastic members 17 around the wearer's legs might be adversely affected by the pressure P. In this way, the elastic members 17 associated with the leg-openings cooperate with the ranges B, which are less stretchable than the range A, so to maintain the desired fitness of the diaper 1 around the wearer's legs. It is unnecessary for such diaper 1 to use elastic members 17 associated with the leg-openings that have a relatively high stretch stress to compensate for the influence of the pressure P. With such diaper 1 according to the present invention, there is no anxiety that the elastic members 17 will have a relatively high stretch stress that might be unacceptably pressed around the wearer's legs.

In contract to applicant's invention which requires the centrally located range A (first zone) to be have a larger L/D ratio than range B (second zone), Divo et al. depicts attaching the composite elastic member 37 to waist regions 34 and/or the areas 27 defining the leg openings (Col. 17, lines 31-35).

Such a teaching is completely opposite to applicant's invention.

Morman et al. fails to teach separate elastic members that surround the leg openings and shows the elastic region as intersecting the cut out portions of the leg openings. (See Fig. 2)

Serbiak et al. non-extensible areas 46 on either side of extensible area 30. (See Fig. 7)

Should the Examiner attempt to construe the non-extensible areas of Serbiak et al. are reading on applicant's second zone is it noted that applicant's independent claim 1 requires that the first and second zones each include fibers that extend between bonding zones and that the bonding zones secure the elastically stretchable first layer to the inelastically stretchable second

layer. Since Serbiak et al. teaches that the extensible areas include an elastic layer bonded to the body side layer and outer layer and depict the extensible areas by circles 30, and fails to show circles 30 in the side portions of Fig. 7, the side portions do not have the elastic layer and therefore are not structurally similar to applicant's second zones which include the elastically stretchable first layer.

Based upon the above, it is submitted that Divo et al. alone or in combination with Morman et al. and Serbiak et al. does not anticipate or otherwise render obvious applicant's claimed invention.

The Examiner's reliance upon Estey et al. does not overcome the deficiencies in Divo et al, Morman et al. and Serbiak et al. noted above.

Based upon the above distinctions between the prior art relied upon by the Examiner and the present invention, and the overall teachings of prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon the prior art as required under 35 U.S.C. §102 as anticipating applicant's claimed invention. Moreover, the Examiner cannot properly rely upon the prior art under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicant's claimed invention.

It is, therefore, submitted that any reliance upon prior art would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejection of the claims should hence be withdrawn.

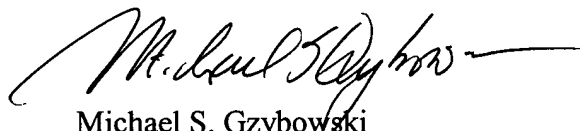
Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

If upon consideration of the above, the Examiner should feel that there remains outstanding issues in the present application that could be resolved, the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Gzybowski", with a long horizontal flourish extending to the right.

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